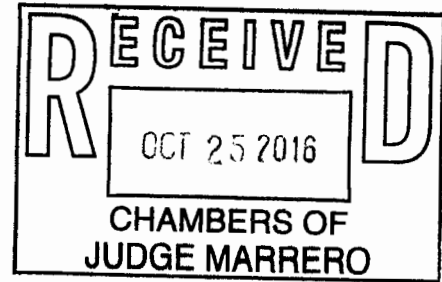


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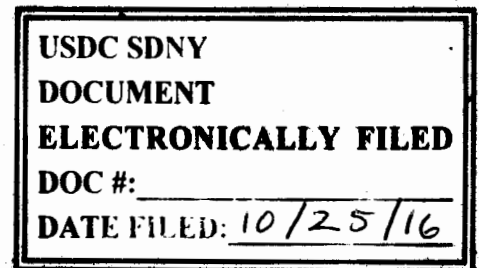


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October 25, 2016

BY FAX

Hon. Victor Marrero
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street, Suite 1040
New York, NY 10007



Re: C.D.S. Inc. v. Zetler et al., No. 16 Civ. 3199 (VM) (JLC)

Dear Judge Marrero:

I represent defendant CDS LLC and defendants/counterclaim plaintiffs Rapid Systems CC and Bradley Zetler (collectively "Rapid Systems") in this case.

Rapid Systems has a motion pending for (i) a temporary restraining order and preliminary injunction, (ii) an order vacating the existing preliminary injunction, and (iii) leave to file an amended pleading adding new counterclaims. The Court has scheduled a conference on that motion for October 27, 2016. This letter is to apprise the Court of Rapid Systems' even newer counterclaims and the motion Rapid Systems will make for leave to pursue these very recently discovered claims. These newer claims arise from the stunning revelations made in the counterclaim defendants' letter to your Honor dated October 21, 2016.

That letter admits that CDS SARL is developing a product intended to replace Agencypad. Shockingly, it says that CDS SARL started developing the replacement far earlier than Rapid Systems had suspected: Development began "in or about June 2015." (ECF Doc. 132, at 2.) The impact of this astounding revelation cannot be overstated. All the facts of this case are cast in an entirely new light. If Agencypad is owned by C.D.S. Inc., then counterclaim defendant Jerome Marechaux, who controls all the counterclaim defendants in this case, has been flagrantly breaching his fiduciary duty to C.D.S. Inc. in an extraordinary manner for approximately one year prior to C.D.S. Inc.'s commencement of this action on April 29, 2016.

Looking at the state of affairs in June 2015, we see the following: Marechaux and Zetler, the two C.D.S. Inc. shareholders, have been managing C.D.S. Inc. directly, without any board of directors, for ten years. Counterclaim defendants Jerome Viollon, Christelle Riot, and

Christophe Racle – the three persons whom Marechaux would eventually appoint to C.D.S. Inc.’s board – are employees of CDS SARL;¹ and counterclaim defendant Diane Treat is a C.D.S. Inc. employee reporting directly to Marechaux.² At approximately this time, Marechaux and Racle traveled from Paris to New York, where Racle, at Marechaux’s insistence, performed IT work on C.D.S. Inc.’s computer network. Then they brought Treat back to Paris with them for a visit the purpose of which was never made clear to Mr. Zetler. Indeed, Mr. Zetler demanded that Ms. Treat briefly postpone her trip to Paris, but Mr. Marechaux overrode Mr. Zetler.³ At this time, Racle could easily have taken copies of Portfoliopad’s and Agencypad’s source code. (Notably, the counterclaim defendants’ letter of October 21, 2016, does not disavow using the Portfoliopad database in the secret project to replace Agencypad.) And presumably, during her trip to Paris at this time, Treat was apprised of the secret plan to replace Agencypad.⁴

But Marechaux and his cohorts faced an obvious problem. As the exclusive distributor of Rapid Systems’ Agencypad, they were clearly breaching contractual obligations not to compete with Rapid Systems. Alternatively, if they should argue that Agencypad is owned by C.D.S. Inc., then all of them were zealously (and outrageously) working against C.D.S. Inc.⁵

One way or another, Marechaux clearly wanted to promote his own business, CDS SARL, at the expense of Rapid Systems (in which he has no interest) and C.D.S. Inc. (in which Bradley Zetler has a 45% interest). The one person who stood in the way of this secret scheme to promote CDS SARL over the other two “CDS Global” companies was Bradley Zetler.

Marechaux therefore plotted to remove Mr. Zetler from CDS SARL’s path. Public records show that on November 18, 2015, CDS SARL registered the Internet domain “cds-official.com.”⁶ Mr. Zetler was never told of the domain registration. In January 2016, during a three-way call among Treat, Zetler and himself, Marechaux proposed that Treat should take over Zetler’s role in the management of C.D.S. Inc. Apparently Treat had already considered this offer, because she wasted no time affirming that she would gladly accept it. Finally, on March 4, 2016, Marechaux appointed three CDS SARL employees – Viollon, Riot and Racle, all of whom were pushing forward the secret project to replace Agencypad – to become the board of C.D.S. Inc. Within minutes they notified Mr. Zetler that Ms. Treat was taking over his role in the management of C.D.S. Inc., effective immediately. Only because Marechaux knew Rapid Systems owns the “@cdsglobal.com” domain, all of C.D.S. Inc.’s and CDS SARL’s personnel

¹ CDS SARL is 92% owned by Marechaux, 5% owned by Riot, and 3% owned by Viollon.

² “[T]he management of Diane [Treat] was part of [Marechaux’s] responsibilities within the management of CDS, Inc.” (Marechaux Dep. 35:13-15.)

³ Relevant e-mail correspondence is attached hereto as **Exhibit A**.

⁴ The counterclaim defendants insist that Treat does not “have anything to do with or any involvement of any kind with SARL’s new product.” (ECF Doc. 132, at 1.) But they fail to deny that Treat was *aware* of the project.

⁵ Counterclaim defendants’ letter of October 21, 2016, claims the Agencypad replacement is necessary because Agencypad is somehow unsatisfactory. Even if true, this cannot exculpate their disloyal efforts to undermine C.D.S. Inc. Their first duty would be to improve Agencypad. And if Agencypad truly had to be replaced, the opportunity to create the replacement must be given to C.D.S. Inc. (assuming that C.D.S. Inc. owns Agencypad).

⁶ See <https://www.whois.com/whois/cds-official.com>.


quickly stopped using the "@cdsglobal.com" e-mail accounts (provided by Rapid Systems for over ten years, and still made available to them), switching to e-mails provided by CDS SARL using the "@cds-official.com" domain, secretly registered by CDS SARL four months earlier.

Then Marechaux caused the instant action to be commenced by an entirely *ex parte* application seeking "emergency" relief on the theory that Agencypad belongs to C.D.S. Inc., falsely alleging that Mr. Zetler had stolen C.D.S. Inc.'s "@cdsglobal.com" e-mails, and even concocting an allegation that Mr. Zetler had sabotaged the www.cdsglobal.com website. The plot succeeded. Within five weeks, Marechaux had procured the preliminary injunction under which Rapid Systems cannot maintain or develop Agencypad except insofar as C.D.S. Inc.'s court-ordered "cooperation" will allow. Furthermore, under the injunction, CDS SARL's employee Christophe Racle is provided total, unfettered access to information about customer requests for new features in Agencypad and about any development work to address those requests. Thus, Agencypad is forced into a state of stagnation while CDS SARL races ahead developing its substitute, fully informed of what the Agencypad market is demanding from Agencypad.

Based on this revelation of Marechaux's secret plan to replace Agencypad, Bradley Zetler has a fraud claim against Marechaux. By this letter, Mr. Zetler apprises the Court of his intention to move for leave to amend the counterclaims to add that claim for relief. Additionally, however, the counterclaim defendants' careful efforts to keep secret their project to replace Agencypad constitutes a straightforward case of "fraud on the court." *See, e.g., Rybner v. Cannon Design, Inc.*, 1996 WL 470668, at *4 (S.D.N.Y. 1996) (finding fraud on the court based on plaintiff's intentionally "hinder[ing] the fact finder's fair adjudication of the case and his adversary's defense of the action," thereby threatening "the integrity of the judicial process"). Every aspect of C.D.S. Inc.'s *ex parte* motion would have been seen entirely differently if the secret project to replace Agencypad had been known. **First**, the secret project is highly probative evidence going to the heart of the merits of the counterclaim defendants' claim that C.D.S. Inc. owns Agencypad. For that claim implies an egregious breach of the counterclaim defendants' fiduciary duties as of at least June 2015. **Secondly**, the revelation of this secret project completely overturns the Court's analysis of the harms and the balance of hardships. Now it is known that the injunction allows CDS SARL to race ahead with its Agencypad substitute and allows CDS SARL to enjoy constant access to customer requests for improvements to Agencypad and constant access to Rapid Systems' efforts to address the customer requests.

Based on the stunning revelation that a secret project to replace Agencypad began in June 2015, the preliminary injunction should be dissolved immediately, and Rapid Systems should be afforded expedited discovery regarding the secret project, so that the Court may determine any other appropriate remedies.

Respectfully submitted,



Ihsan Dogramaci

cc (by e-mail): Hon. James L. Cott; Special Master Daniel Garrie; all counsel of record

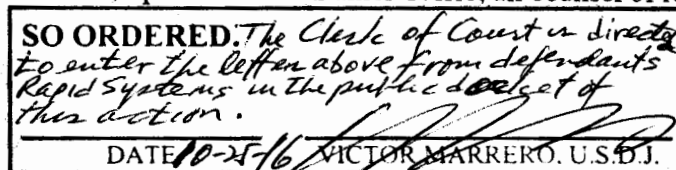


Exhibit A

Date: Wed, 20 May 2015 12:30:53 +0000
From: =?Windows-1252?Q?J=E9r=F4me_Mar=E9chaux?= <jerome@cdsglobal.com>
To: Bradley Zetler <brad@cdsglobal.com>
Cc: Diane Treat <diane@cdsglobal.com>, Christelle Riot
<christelle@cdsglobal.com>
Subject: Re: Paris trip

Hi Bradley,

Paris trip for Diane was schedule since longtime and cannot be change.
Something you knew.

I don't understand why you set up meetings yesterday with clients for next week without speaking to Diane first!! it is not the right process. If you plan to meet clients Diane should set up the meetings.

Cheers

Jérôme Maréchaux
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cell: +33 6 08 17 11 34
fax: +33 1 42 21 92 12
skype: j.marechaux
jerome@cdsglobal.com
www.cdsglobal.com

Le 19 mai 2015 à 16:09, Bradley Zetler <brad@cdsglobal.com> a écrit :

Hi Diane

I have not been able to get hold of Jerome yet, but he has made a mistake by asking you to be in Paris next week. As you know I will be in town that week and we already have meetings setup with clients and thus being in Paris that week is not an option. Your Paris trip can be rescheduled for the following week or when convenient for you.

I will chat to Jerome in the morning to explain, but consider the Paris trip postponed by at least 1 week.

Best regards
Bradley

Bradley Zetler
cDs Global - CEO

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Cell: +27 82 493 3355
Fax: +27 21 424 3111
Skype: bzetler
brad@cdsglobal.com
www.cdsglobal.com



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